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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

3 JORDAN KRANTZ individually and
4 on behalf of all others similarly
situated,

Plaintiff,

7 | V.

8 OLD COPPER COMPANY, INC.
9 f/k/a J.C. PENNEY COMPANY,
10 INC., and PENNEY OPCO LLC,
d/b/a JCPENNEY,

Defendants.

Civil Action No.: 2:24-cv-10031

COMPLAINT – CLASS ACTION

1. **FRAUD**
2. **NEGLIGENT MISREPRESENTATION**
3. **BREACH OF CONTRACT**
4. **UNJUST ENRICHMENT**
5. **VIOLATION OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT**
6. **VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW**
7. **VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW, BUS. & PROF. CODE**

8. VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW

JURY TRIAL DEMANDED

10 Plaintiff Jordan Krantz (“Plaintiff”), individually and on behalf of all
11
12 others similarly situated, brings this action against Defendants Old Copper
13 Company Inc. f/k/a J.C. Penney Company, Inc. (“Old Copper”) and
14 Defendant Penney OpCo LLC (“Penney OpCo”) d/b/a JCPenney
15 (collectively “JCPenney” or “Defendants”), and alleges based upon personal
16 knowledge with respect to himself and on information and belief derived
17 from, among other things, investigation of counsel and review of public
18 documents as to all other matters:

NATURE OF THE ACTION

22 1. With the sheer volume of online products being offered, consumers rely
23 on accurate pricing to make informed decisions. Unfortunately, many retailers
24 engage in deceptive and misleading practices by advertising products as
25 “sales” or “markdowns” by showing significantly inflated “reference prices”
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1 or “regular prices” that are rarely, if ever, actually charged. These fake
2 reference prices fool consumers into thinking they are getting a great deal at
3 the “sale” price, when in fact, they have merely been tricked by the retailer,
4 and in reality the consumer is paying the same amount, or even more than,
5 the usual price of the item. The effect of this unlawful tactic is to set
6 consumers’ perception of the value of a product at a grossly inflated level,
7 thereby inducing consumers to unwittingly pay more for the product than they
8 might normally pay. Furthermore, researchers have found that when
9 consumers believe that the supposedly reduced price will end soon, they are
10 more likely to buy now, rather than wait or comparison shop, and buy
11 someplace else.¹ But in many instances, the reference price is not a true
12 discount.

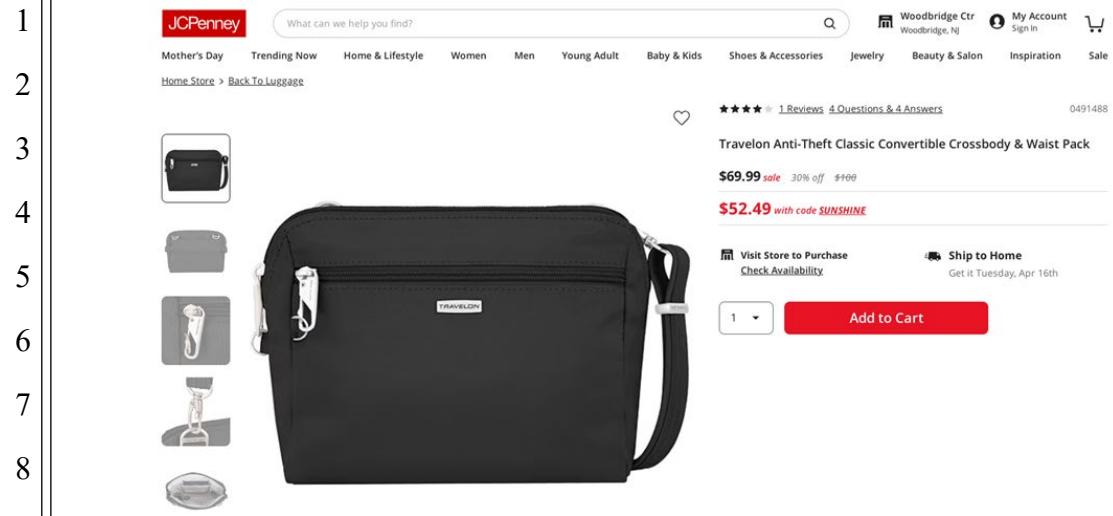
13 2. Highlighting how these false sales have become a true problem in the
14 marketplace, the Federal Trade Commission (“FTC”) created a rule
15 prohibiting the practice. 16 C.F.R. § 233.1. The FTC identified this practice
16 as a form of “deceptive pricing” that denies consumers the value of the
17 bargain that they thought they were receiving.

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25 ¹ Patrick Coffee, Thought You Saved \$60 on that Vacuum Cleaner? Think
26 Again, Wall St. J. (Aug. 24, 2023), available at:
27 <https://www.wsj.com/articles/thought-you-saved-60-on-that-vacuum-cleaner-think-again-c89ce344> (Last accessed November 18, 2024).

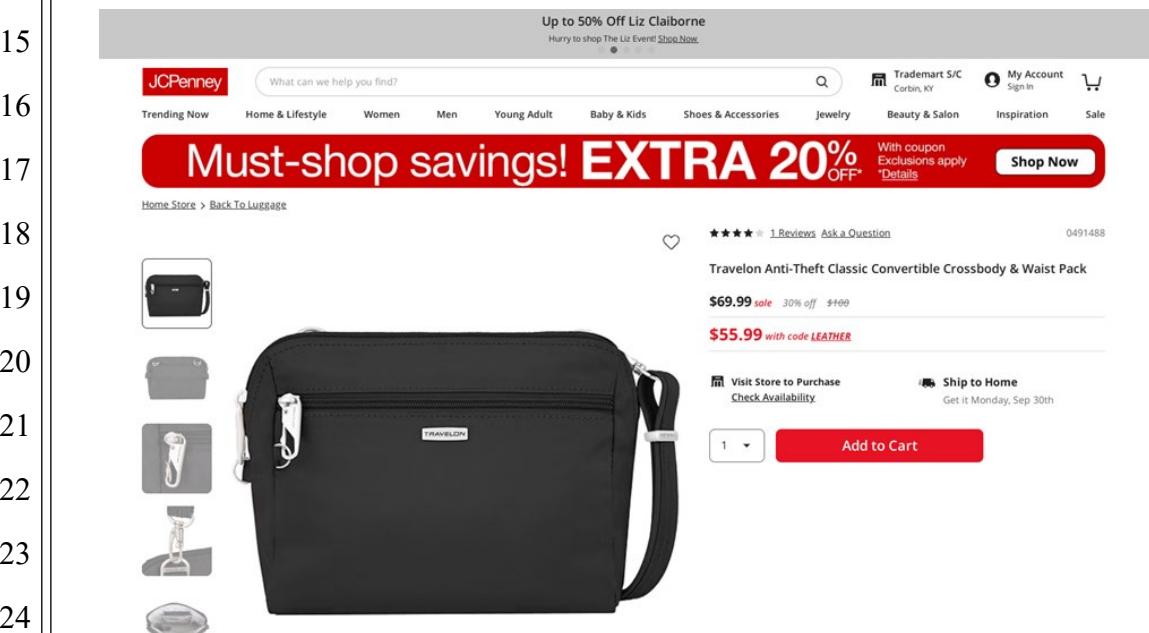
1 3. JCPenney has engaged in just such a deceptive pricing scheme.
2 JCPenney advertises perpetual or near perpetual discounts on many of its
3 products, supposedly offering discounts of up to 70% off JCPenney's self-
4 created, fictitious reference prices. JCPenney represents to consumers that its
5 reference price is the "regular" or "normal" price of the item, which functions
6 as a new and inflated reference point from which consumers discount their
7 "savings" on various products.

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10 4. JCPenney's reference prices are false because JCPenney rarely, if ever,
11 offers the products for the reference price. Instead, the inflated reference
12 prices allow JCPenney to continually advertise "sale" events and product
13 discounts in order to induce consumers into purchasing products. In reality,
14 the "sale" price is the price at which JCPenney regularly sells the product, but
15 the consumer has been tricked into thinking she found a great discount.

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17 5. To illustrate, below is a April 9, 2024 screengrab from JCPenney's
18 website for Travelon Anti-Theft Classic Convertible Crossbody & Waist Pack
19 listed as "on sale" for \$69.99 from an original price of \$100.00.
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6. And below, is a screengrab of the same product, taken from JC Penney's website more than four months later, on September 24, 2024, which still reveals the inflated reference price of \$100 and false discount price of \$69.99:



7. JC Penney's practice of falsely inflating reference prices in order to give the illusion of higher value, bigger discounts, and a false sense of time

1 pressure, constitutes false advertising, and is an unfair and deceptive practice
2 under California's Consumer Legal Remedies Act ("CLRA") Cal. Civ. Code
3 §§ 1750 *et seq.*
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5 8. Accordingly, Plaintiff, on behalf of himself and the Classes (as defined
6 below) now seeks to hold JCPenney accountable for its unfair, deceptive, and
7 unlawful policy of displaying false or misleading discount or "sale" prices.
8 Plaintiff seeks to bring claims on behalf of a Nationwide Class and a
9 California Subclass (collectively "Classes") of consumers who purchased
10 falsely discounted products on JCPenney's website and is seeking, among
11 other things, to recover damages and injunctive or declaratory relief ordering
12 Defendants to disgorge all revenues unjustly received from the proposed
13 Classes due to its intentional and unlawful practice of using false reference
14 prices and false discounts.
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17 **PARTIES**
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19 9. Plaintiff Jordan Krantz is an individual citizen of the State of
20 California and a natural adult person who resides in Los Angeles County,
21 California.
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24 10. Defendant Old Copper Company, Inc. f/k/a J.C. Penney
25 Company, Inc. was a Delaware corporation with its headquarters located at
26 6501 Legacy Drive, Plano, TX 75024-3698. On May 15, 2022, J.C. Penney
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1 Company, Inc. filed for Chapter 11 Bankruptcy, and on December 7, 2020,
2 sold substantially all of its retail and operating assets to Penney OpCo LLC,
3 a private company doing business as JCPenney outside of the Chapter 11
4 Bankruptcy process. All retail operations of Old Copper Company, Inc. f/k/a
5 J.C. Penney Company, Inc. ended with the date of the sale of its retail and
6 operating assets.

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9 11. Defendant Penney OpCo, LLC (“Penney OpCo”) is a Virginia
10 limited liability company with its principal executive offices located at 6501
11 Legacy Drive, Plano, TX 75024-3698.

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13 **JURISDICTION AND VENUE**

14 12. The Court has subject matter jurisdiction over this action under
15 the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2). The amount in
16 controversy exceeds \$5 million, exclusive of interest and costs. Upon
17 information and belief, the number of class members is over 100, many of
18 whom have different citizenship from Defendants. Thus, minimal diversity
19 exists under 28 U.S.C. § 1332(d)(2)(A).

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21 13. This Court has specific personal jurisdiction over Defendants
22 because they can be found in and operate in this District, and generally
23 conduct substantial business in the State of California. Defendants have
24 sufficient minimum contacts in California, and/or otherwise intentionally
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1 avail themselves to the California market through the operation of its e-
2 commerce website within the State of California, knowingly and intentionally
3 shipping goods into the State of California for decades, and a substantial part
4 of the unlawful business practices which give rise to this action occurred in
5 this District.

7
8 14. This Court may exercise personal jurisdiction over Defendants
9 to the fullest extent allowed under the Federal Due Process Clause.
10 Defendants have certain minimum contacts with the State of California.
11 Defendants have and continue to purposefully perform some acts or
12 consummate some transactions in the State of California, and Plaintiff's
13 claims arise from, or are connected with, Defendants' transactions. The
14 assumption of jurisdiction by this Court does not offend traditional notions of
15 fair play and substantial justice, consideration being given to the quality,
16 nature, and extent of the activity in the State of California, the relative
17 convenience of the parties, the benefits and protection of laws of the State of
18 California afforded the respective parties, and the basic equities of the
19 situation.

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21 15. JCPenney operates a website, www.jcpenney.com, by which
22 JCPenney advertises and sells its goods in California. The website is regularly
23 viewed by and used to purchase products by consumers in California.

16. Venue is proper in this Court pursuant to 28 U.S.C. § 1331(b) because a substantial part of the events giving rise to this action occurred in this District. For example, Plaintiff was in Los Angeles County, California when he saw the false discount representations on JCPenney's website and placed the order on JCPenney's website after relying on the deceptive advertised price displayed. JCPenney shipped the goods Plaintiff purchased to Plaintiff's home in California.

FACTUAL BACKGROUND

L. FALSE REFERENCE PRICING SCHEMES

17. Consumers' reactions to sales and to false sales are well studied in academic literature. Research shows that reference prices, such as those used by Defendants, materially impact consumers' behavior. A reference price affects a consumer's perception of the value of the transaction, the consumer's willingness to make the purchase, and the amount of money the consumer is willing to pay for the product.²

18. This deceptive practice involves three elements, most easily

² Urbany, Joel E., William O. Bearden and Dan Weilbaker (1988), "The Effect of Plausible and Exaggerated Reference Prices on Consumer Perceptions and Price Search," *Journal of Consumer Research*, 15 (June), 95–110; Chandrashekaran, Rajesh (2004), "The Influence of Redundant Comparison Prices and Other Price Presentation Formats on Consumers' Evaluations and Purchase Intentions," *Journal of Retailing*, 80 (1), 53–66.

1 shown through an example using a retailer that wants to sell a blue shirt with
2 a market value of \$35. First, the retailer advertises an inflated “reference
3 price” or the “strike through price” for that shirt, which the retailer wants the
4 consumer to believe is that shirt’s normal price. For this example, that price
5 is \$50. The problem is that the retailer has not actually sold the shirt for \$50,
6 nor could it do so because the market will not bear such an inflated price when
7 other similar blue shirts are sold for less. Instead that \$50 price is fictitious,
8 created by the retailer in order to show the consumer the second element in
9 the fraud: a supposed “discount” off that fictitious reference price. In this
10 example, that amounts to a 30% discount. Then, in the third element, the
11 retailer presents the consumer with the “new” discounted price of \$35 for the
12 blue shirt, which the retailer wanted to sell the shirt for all along. As part of
13 this scheme, the retailer wants the consumer to believe that the shirt is worth
14 \$50 and that the consumer is getting a deal by actually paying \$15 less, which
15 induces the consumer to make a purchase under the false belief that she is
16 getting a bargain on a more valuable shirt (30% off a \$50 product in this
17 example) and creates a false sense of urgency that the purported “discount”
18 or “sale” will end and the consumer will have to pay the “reference price” for
19 the shirt. Using this deception, retailers can even falsely induce consumers to
20 pay prices above the market price, for example \$40 for the blue shirt, because
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1 the consumer still believes she is getting a deal, i.e., a 20% markdown.

2 19. Accurate reference prices play an important role in consumers'
3 ability to compare products because they allow consumers to make informed
4 decisions by comparing one retailer's prices to another. This is especially true
5 where the consumer is comparing similar, though not identical, products such
6 as two white T-shirts. In such circumstances, reference prices increase a
7 consumer's interest in the product by increasing the consumer's estimate of
8 savings offered by one retailer.³ "[A] higher plausible reference price . . .
9 consistently makes the offer appear to be a better value than if no reference
10 price appears."⁴ Therefore, when a retailer advertises its products with
11 inflated reference prices, consumers are harmed because they are denied the
12 ability to accurately compare prices across the market, and they imbue the
13 advertised product with a false sense of value that they would not have
14 developed if the inflated reference price had not been listed.
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16 20. Unsurprisingly, research shows that consumers prefer to get a
17 bargain. Indeed, "shoppers sometimes expend more time and energy to get a
18 discount than seems reasonable given the financial gain involved," and "often
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³ Blair, Edward A. and E. Laird Landon, Jr. (1981), "The Effects of Reference Prices in Retail Advertisements," *Journal of Marketing*, 45 (Spring), 61-69.

⁴ Urbany, The Effect of Plausible and Exaggerated Reference Prices on Consumer Perceptions and Price Search, *supra* n. 1 at 106.

1 derive more satisfaction from finding a sale price than might be expected on
2 the basis of the amount of money they actually save.”⁵ The fear of losing such
3 a discount, because of the false impression given the retailer that the discount
4 or sale price will not last forever, often induces the consumer to purchase
5 quickly, without performing comparison shopping.
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7 21. Studies also show that consumers are driven by internal and
8 external reference prices.⁶ Internal reference prices are a consumer’s price
9 expectations based on past experiences, stored in their memory. External
10 reference prices are prices encountered during the shopping experience, such
11 as suggested retail prices or sale tags.⁷ Research suggests that consumers
12 adjust their internal value expectations (i.e., internal reference prices) to align
13 with external reference prices they encounter.⁸ In addition, for infrequently
14 purchased items, or unique items, consumers may lack an actual internal
15 reference price simply because they have not priced the product previously,
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20 _____
21 ⁵ Darke, Peter and Darren Dahl. “Fairness and Discounts: The Subjective
22 Value of a Bargain.” *Journal of Consumer Psychology* 13, No. 3 (2003): 328–
23 338, at 328.
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⁶ Mayhew, Glenn E. and Russell S. Winer. “An Empirical Analysis of Internal
25 and External Reference Prices using Scanner Data.” *Journal of Consumer
26 Research* 19, No. 1 (1992): 62-70, at 68.
27

⁷ *Id.* at 62.
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⁸ Grewal, Dhruv, Kent B. Monroe, and Ramayya Krishnan. “The Effects of
26 Price-Comparison Advertising on Buyers’ Perceptions of Acquisition Value,
27 Transaction Value, and Behavioral Intentions.” *The Journal of Marketing* 62
(1998): 46-59, at 48.

1 and in such situations, consumers rely more heavily on the external reference
2 prices.
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4 22. Retailers, including Defendants, understand that consumers are
5 vulnerable to perceived bargains. Thus, JCPenney has a substantial financial
6 interest in exploiting consumers' well-known behavioral tendencies by
7 inducing consumers into believing they are receiving a bargain—even when
8 they are not. The phenomena of people disproportionately relying on an initial
9 piece of information when making a decision, known as “anchoring,”⁹ is
10 especially relevant in this context. Especially when shopping online,
11 consumers often encounter reference prices as the first, if not the only, insight
12 into a product’s value besides the sale price itself. Thus, consumers use the
13 reference price as a baseline upon which to calculate a product’s true value.
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15 23. Deceptive and misleading pricing such as that employed by
16 Defendants causes consumers to pay more than they otherwise would have
17 paid for products. It also misleadingly resets consumers’ true value
18 expectations by falsely representing the value of products in order to trick
19 consumers into paying more than the products are actually worth.
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25 ⁹ See Program on Negotiation, Anchoring Effect, HARV. L. SCH.,
26 <http://www.pon.harvard.edu/tag/anchoring-effect> (“[T]he anchoring effect,
27 [is] the tendency for the first offer to “anchor” the bargaining that follows in
its direction, even if the offer recipient thinks the offer is out of line.”).
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1 24. In addition to harming consumers, employing false reference
2 pricing disrupts the integrity and fairness that underlies retail markets. When
3 unethical retailers use misleading reference prices, they gain an unfair
4 advantage over honest competitors offering similar products. In the forgoing
5 example, if the dishonest retailer is selling a blue shirt that is purportedly
6 valued at \$50 for just \$35, and the honest retailer is selling a similar \$35 blue
7 shirt for \$35, the online consumer, who cannot otherwise evaluate the true
8 value of the shirt, is more likely to buy the supposedly more valuable \$50
9 shirt, rather than the supposedly less valuable \$35 shirt. If such unlawful
10 advertising practices remain unchecked, businesses that adhere to honest
11 practices will continue to be unfairly disadvantaged.
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14 25. Defendants knew or should have known that the use of false
15 reference prices was misleading consumers to believe that they were
16 receiving a “sale” when, in fact, they were not. Moreover, JCPenney intended
17 for reasonable consumers to understand the “sale” prices to be new prices that
18 JCPenney had reduced from its “regular” or “former” prices. Defendants
19 intentionally failed to disclose to Plaintiff and members of the Classes the
20 truth about its reference prices, i.e. that the prices were fabricated and
21 Defendants never offered the items at the reference prices during the relevant
22 period. Defendants intentionally sought to convey to consumers that they
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1 were receiving a true markdown.

2 26. Defendants intentionally enacted a broad pricing scheme
3 designed to mislead customers into believing that the reference prices were
4 the prices at which the advertised product was formerly listed and the
5 prevailing market rate of the advertised product.

6

7 **II. FALSE REFERENCE PRICING VIOLATES BOTH
8 FEDERAL LAW AND STATE LAW**

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10 27. It is well-established that false reference pricing violates federal
11 and state law. Even so, retailers, including Defendants, continue to use the
12 tactic because they know they will be able to increase sales and profits by
13 tricking consumers into making purchase decisions based on the falsely-
14 inflated reference prices. Though the information available to consumers
15 varies between different types of products, consumers frequently lack full
16 information about products and, as a result, often use information from
17 retailers to make purchase decisions.

18 28. California law prohibits false reference pricing practices like
19 those used by Defendants. *See* Cal. Bus. & Prof. Code § 17501 (expressly
20 prohibiting false former pricing schemes); *see also* Cal. Civ. Code §
21 1770(a)(9) (prohibiting a business from “[a]dvertising goods or services with
22 intent not to sell them as advertised”), and Cal. Civ. Code § 1770(a)(13)
23 (prohibiting a business from “[m]aking false or misleading statements of fact
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1 concerning reasons for, existence of, or amounts of price reductions”).

2 29. The Ninth Circuit Court of Appeals recognizes the harm that can
3 come from advertising false and deceptive reference prices. In *Hinojos v.*
4 *Kohl's Corp.*, 718 F.3d 1098 (9th Cir. 2013), the court found that “[m]ost
5 consumers have, at some point, purchased merchandise that was marketed as
6 being ‘on sale’ because the proffered discount seemed too good to pass up.
7 Retailers, well aware of consumers’ susceptibility to a bargain, therefore have
8 an incentive to lie to their customers by falsely claiming that their products
9 have previously sold at a far higher ‘original’ price in order to induce
10 customers to purchase merchandise at a purportedly marked- down ‘sale’
11 price. Because such practices are misleading—and effective—the California
12 legislature has prohibited them.” *Id.* at 1101.

13 30. The FTC also recognizes the fraudulent nature of fictitious and
14 artificial sale pricing. The FTC’s rules have long included “Part 233—Guides
15 Against Deceptive Pricing” which states in relevant part:

16 One of the most commonly used forms of bargain
17 advertising is to offer a reduction from the
18 advertiser’s own former price for an article. If the
19 former price is the actual, bona fide price at which
20 the article was offered to the public on a regular
21 basis for a reasonably substantial period of time, it
22 provides a legitimate basis for the advertising of a
23 price comparison. Where the former price is
24 genuine, the bargain being advertised is a true one.
25 If, on the other hand, the former price being
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1 advertised is not bona fide but fictitious
2 -- for example, where an artificial, inflated price
3 was established for the purpose of enabling the
4 subsequent offer of a large reduction -- the
5 "bargain" being advertised is a false one; the
6 purchaser is not receiving the unusual value he
7 expects. In such cases, the "reduced price" is, in
8 reality, probably just the seller's regular price. 16
9 C.F.R § 233.1(a).

10 The FTC guidance provides several useful examples of such deceptive sales:

11 An advertiser might use a price at which he never
12 offered the article at all; he might feature a price
13 which was not used in the regular course of
14 business, or which was not used in the recent past
15 but at some remote period in the past, without
16 making disclosure of that fact; he might use a price
17 that was not openly offered to the public, or that was
18 not maintained for a reasonable length of time, but
19 was immediately reduced. 16 C.F.R § 233.1(d).

20 **III. DEFENDANTS USED FALSE REFERENCE PRICING TO
21 DECEIVE ITS CUSTOMERS**

22 31. Using deceptive pricing tactics, Defendants lure consumers by
23 advertising their products at seemingly discounted "sale" prices compared to
24 significantly marked-up reference prices. These fictitious reference prices are
25 never actually charged, making the "discounts" misleading.

26 32. Defendants' advertised discounts are fictitious because the
27 reference prices do not represent a bona fide price at which Defendants
28 previously sold, or offered to sell, the products on a regular basis, for a
commercially reasonable period of time, as required by the FTC. In addition,

1 the advertised reference prices were not the prevailing market retail price
2 within the three months (90 days) immediately preceding the publication of
3 the advertised former reference price, as required by California law.
4

5 33. As a direct result of Defendants' actions, all consumers who
6 purchased products that were advertised with false reference prices and/or
7 misleading discounts on Defendants' website have been deceived and have
8 been undeniably harmed, in that they would not have purchased these
9 products but for the misleading pricing. They have suffered an economic
10 injury by being misled into paying more than the products were actually
11 worth.
12

13 34. Defendants' false pricing scheme has directly harmed all
14 customers who were tricked into buying discounted products on its website.
15 By creating a false perception of significant savings, JCPenney fraudulently
16 inflated demand for its products. This has shifted the demand curve, allowing
17 JCPenney to charge higher prices and generate more sales than would have
18 been possible had it used honest pricing practices.
19

20 35. Consumers, like Plaintiff, were deceived by Defendants'
21 misleading discounts. They did not receive the substantial savings that were
22 advertised, nor were the products actually worth the inflated reference prices.
23 Moreover, consumers would not have purchased the products at the purported
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1 “sale” price but for the misleading reference price.

2 36. The misleading nature of Defendants’ reference prices and
3 discounts was cleverly disguised and could not be detected by a reasonable
4 consumer exercising due diligence, particularly because the deception was
5 hidden over an extended period of time. The only way for a consumer to
6 detect Defendants’ deception would be if the consumer meticulously followed
7 the price of the product every day for months.

8 37. Defendants continue to engage in these deceptive practices on its
9 website by advertising false reference prices and misleading discounts. There
10 is no indication that it will voluntarily cease these tactics. Even if it were to
11 stop temporarily, there is a high risk that it would resume these deceptive
12 practices in the future.

13 38. Defendants’ actions towards consumers and the general public
14 demonstrate malice, fraud, and/or oppression. Its deceptive practices have had
15 a significant negative impact on the Plaintiff, the Classes of affected
16 consumers, and the public at large.

17 39. The advertised reference prices and discounts for Defendants’
18 products on Defendants’ website are misleading. The “sale” price is often
19 very close to, if not higher than, the true price for these products. The listed
20 reference price of Defendants’ products is inflated and does not reflect the
21

1 actual selling price.

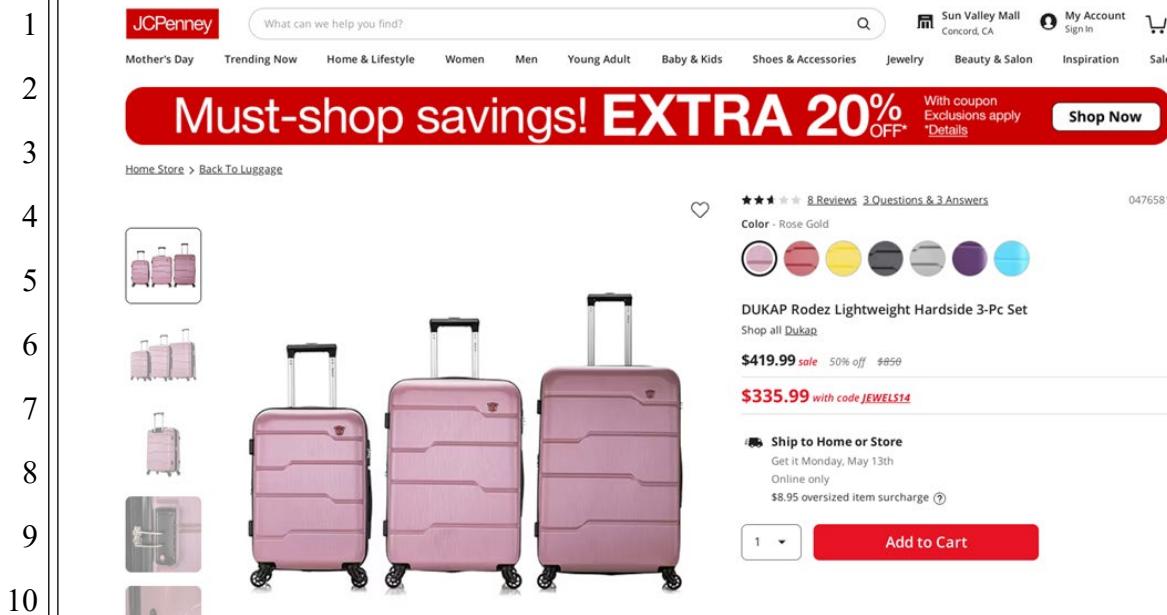
2 40. For example, during the 99-day period from July 24, 2024
3 through October 31, 2024, the following products have been offered at a
4 “discount,” when in fact they were not sold at the reference price at any point
5 during that time period:

| Product Name | Reference Price | Days Sold at Reference Price | Days “On Sale” |
|---|-----------------|------------------------------|----------------|
| American Flyer Fleur-de-lis 4-pc. Expandable Upright Luggage Set | \$500 | 0 | 98 |
| Skyway Epic Spinner Luggage Collection | \$140-\$400 | 0 | 98 |
| American Tourister Disney Mickey Mouse Pants 21” Hardside Lightweight Luggage | \$380 | 0 | 98 |
| Travelon Anti-Theft Classic Fanny Pack | \$100 | 0 | 98 |
| Travelon Anti-Theft Classic Messenger Bag | \$150 | 0 | 98 |
| Travelon Anti-Theft Class Sling Backpack | \$140 | 0 | 98 |
| Rockland 2-pc. Hardside Expandable Luggage Set | \$260 | 0 | 98 |
| Travelon Set of 3 Assorted Piped Pouches | \$40 | 0 | 98 |
| Travelon Set of 3 Lightweight Packing Organizers | \$40 | 0 | 98 |
| InUSA Royal Lightweight Hardside 28” Spinner | \$225 | 0 | 98 |

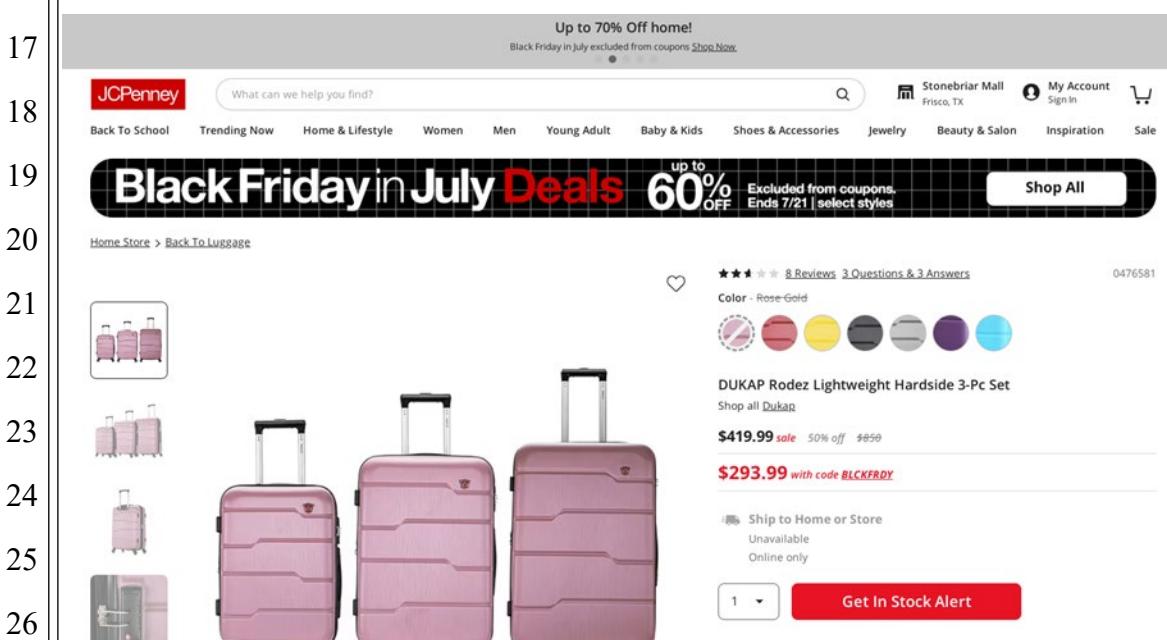
| | | | | |
|---|--|--------|---|----|
| 1 | Rockland Varsity 4-pc. Luggage Set | \$750 | 0 | 98 |
| 2 | Travelon Universal Adapter with USB Charger | \$40 | 0 | 98 |
| 3 | Rockland My First Backpack | \$60 | 0 | 98 |
| 4 | Beautyrest Silver BRS900 Extra Firm Tight-Top | \$1800 | 0 | 98 |
| 5 | Discovery Kids Magnet Tiles Set | \$40 | 0 | 98 |
| 6 | On Air Flex Duo 3.5" Ring Light | \$44 | 0 | 98 |

11 41. The reference chart above contains merely a fraction of those
12 products listed as “discounted” on JCPenney’s website when, in fact, they
13 were not listed any time for the referenced price in the preceding 90 days.

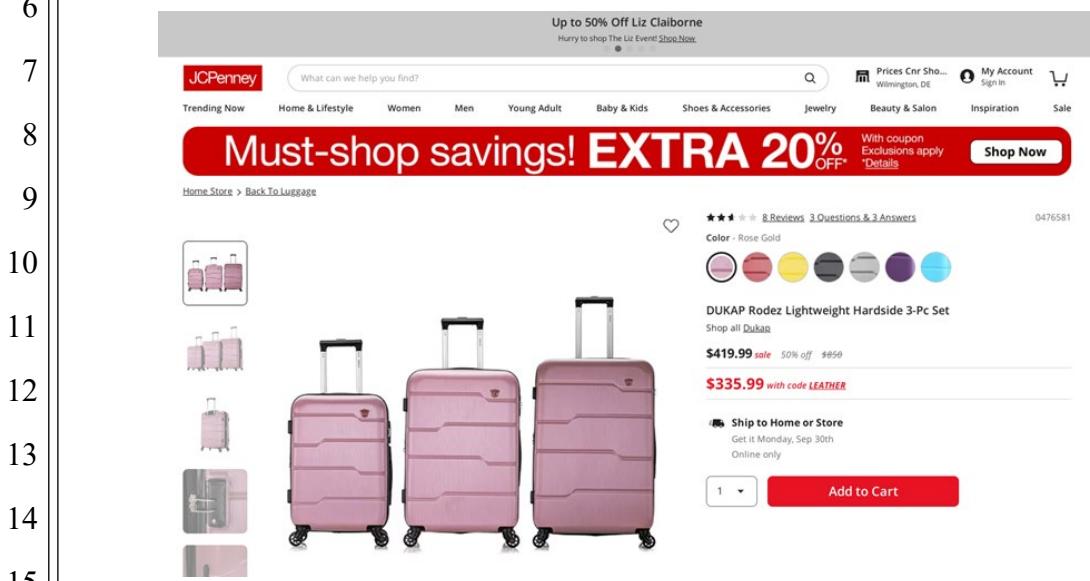
14 42. The below screen shot is an example of how JCPenney presents
15 its deceptive pricing to consumers. It shows the DUKAP Rodez Lightweight
16 Hardside 3-pc Set, listed at a discount price of \$419.99, which reflects a 50%
17 savings off of the “reference” price of \$850.00. This screenshot is from May
18 7, 2024.



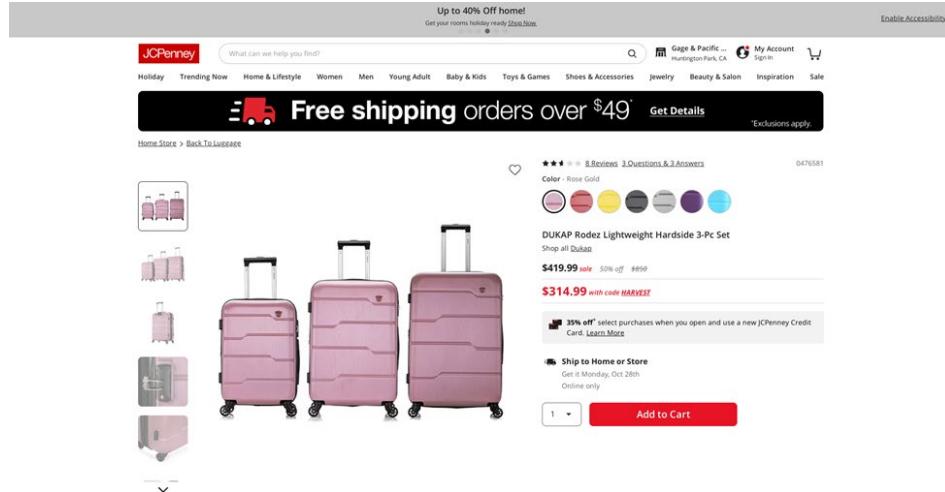
43. Approximately two months later, on July 16, 2024, the DUKAP Rodez Lightweight Hardside 3-pc Set was still listed at a supposedly discounted price of \$419.99, reflecting a 50% savings off of the “reference” price of \$850.00.



1 44. Approximately one month later, on September 24, 2024, the
2 DUKAP Rodez Lightweight Hardside 3-pc Set, was still listed at a
3 supposedly discounted price of \$419.00, reflecting a 50% savings off of the
4 claimed “reference” price of \$850.00.



16 45. And approximately two more months later, on October 15, 2024,
17 the DUKAP Rodez Lightweight Hardside 3-Pc. Set, was still listed at a
18 supposedly discounted price of \$419.00, reflecting a 50% savings off the
19 claimed “reference” price of – still - \$850.00.



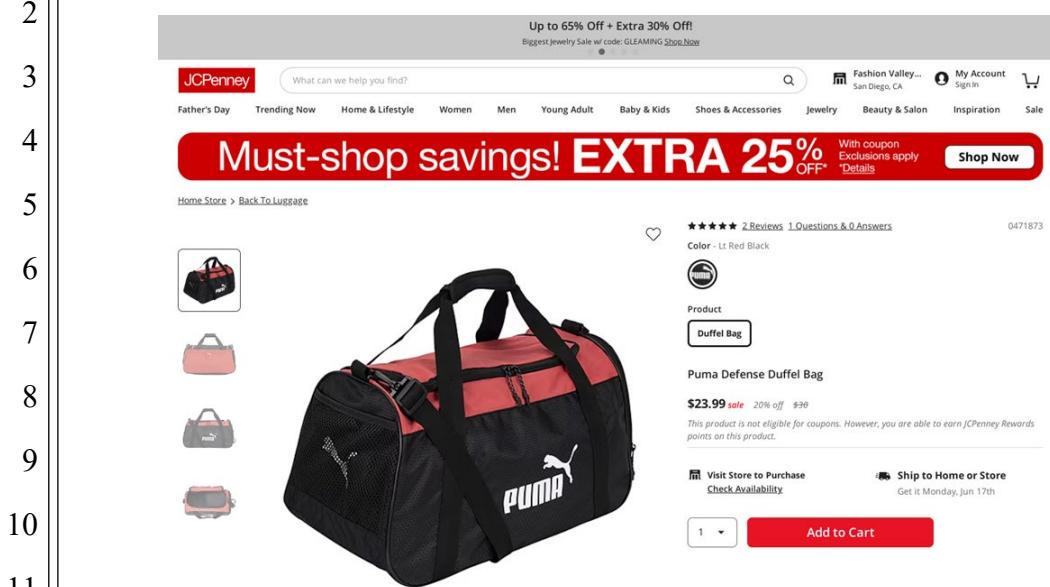
10. 46. For a significant and uninterrupted period of time over several
11 months, JCPenney ran what appeared to be sales on many of its products.
12 These supposed discounts were often substantial, reaching up to 70%. Even
13 though the exact discount amount might fluctuate slightly, the products were
14 advertised as on “sale;” however, all or nearly all the advertised sale products
15 are never actually offered for purchase or sold at the reference price.
16
17

18. **IV. PLAINTIFF FELL VICTIM TO DEFENDANTS'S
19 DECEPTIVE PRACTICES**

20. 47. Plaintiff is, and at all relevant times has been, a resident and
21 citizen of the State of California. On June 5, 2024, while browsing
22 Defendants' website, Plaintiff saw a prominently displayed advertisement
23 boasting significant “savings” on various products.
24

25. 48. Defendants' website presented an original marked-through price,
26 which was the reference price, to the right of the lower “Sale Price.” The
27

1 below image represents what Plaintiff saw when purchasing the bag.



12 49. After seeing the reference price of \$30, Plaintiff specifically
13 chose to purchase the product because Plaintiff believed he was receiving a
14 significant discount on the product he had chosen. Because he was interested
15 in the product and felt that the discounted price would likely not last, and that
16 he was getting a significant bargain on the product, Plaintiff chose to
17 immediately move forward with purchasing it. As a reasonable consumer, he
18 trusted that the products had a value commensurate with the reference price.
19 Thus, the advertised “sale” appeared to be a genuine discount.
20

21 50. Relying on the advertised savings, Plaintiff added the products
22 to his cart and completed the purchase. A copy of the receipt is attached hereto
23 as **Exhibit A**.

24 51. Unbeknownst to Plaintiff, JC Penney rarely, if ever, offered its
25

1 products at the advertised “regular” reference prices, and did not do so for the
2 product Plaintiff purchased at any time in the 90 days prior to that purchase.
3 Simply put, Defendants intentionally deceived Plaintiff. The actual value of
4 the product purchased did not match the inflated reference price Plaintiff was
5 led to believe was the true value of the bag. Thus, the advertised “sale” wasn’t
6 a deal, or even a sale, at all.
7

9 52. Defendants’ inflated reference prices and misleading discounts
10 were significant and material misrepresentations that directly influenced
11 Plaintiff’s purchase. Plaintiff relied on this false information in good faith.
12 Had Plaintiff known the truth, he would not have bought the product for the
13 price that he did.
14

16 53. Defendants’ misrepresentations were material because a
17 reasonable consumer relies on such information when making purchasing
18 decisions.
19

20 54. As a direct consequence of Defendants’ actions, Plaintiff was
21 financially harmed. He would not have purchased the product at the same
22 price absent Defendants’ misrepresentation. The advertised discounts were
23 illusory, and the products were not worth the reference price listed by
24 Defendants, as Plaintiff was led to believe.
25

26 55. Moreover, Plaintiff was damaged because Defendants’ false
27
28

1 pricing scheme inflated the true market value of the item Plaintiff purchased.
2 Even though Defendants' false pricing scheme is pervasive on its website, not
3 every advertised sale is in fact false, and as such, without substantial effort,
4 Plaintiff and other consumers cannot know which sales are false and which
5 are true. Thus, Plaintiff is susceptible to this reoccurring harm because he
6 cannot be certain that Defendants have corrected the deceptive pricing
7 scheme, and Plaintiff desires to shop at Defendants' website in the future.
8 Plaintiff does not have the resources to always (or even regularly) determine
9 whether JCPenney is complying with state and federal law with respect to its
10 pricing practices by watching the price over the course of several months.

14 56. Plaintiff has the legal right – now and in the future – to expect
15 truthful and accurate information from Defendants regarding advertised
16 prices and discounts. Plaintiff, and the other members of the Classes, will be
17 harmed if, in the future, they are left to guess as to whether JCPenney is
18 providing a legitimate sale, and whether products are actually worth the
19 amount that Defendants are representing. If Plaintiff were to trust that
20 Defendants have reformed their pricing practices and were to purchase again
21 from Defendants, he would have no way of knowing if the advertised
22 discounts were legitimate. Plaintiff continues to be interested in purchasing
23 products that are sold by Defendants and offered at discounted prices, but he
24
25
26
27
28

1 will be unable to trust and rely on Defendants' website pricing. Absent
2 injunctive relief, Plaintiff cannot know whether Defendants' reference prices
3 represent true former prices, and the true value of the item, or inflated
4 reference prices employed in order to deceive customers into believing that a
5 legitimate discount is being offered. Thus, Plaintiff will be harmed on an
6 ongoing basis and/or will be harmed once or more in the future.
7

9 57. The deceptive practices described herein are not limited to the
10 specific product Plaintiff purchased or categorical group of products. The
11 misleading advertising and sales tactics employed by JCPenney are
12 systematic and widespread across its entire website, impacting customers
13 nationwide.
14

16 **V. CLASS DEFINITION AND ALLEGATIONS**

17 58. Plaintiff brings this action pursuant to Rule 23(b)(2) and (b)(3)
18 of the Federal Rules of Civil Procedure on behalf of himself and on behalf of
19 all other persons similarly situated.
20

21 59. Plaintiff proposes the following Class definitions, subject to
22 amendment as appropriate:
23

24 **Nationwide Class (the "Nationwide Class" or 25 "Class")**

26 All individuals who, within the applicable
27 limitations period, purchased from the Defendants'
28 website one or more products that were advertised
or promoted by displaying or disseminating a

1 reference price or discount for an item that was not
2 advertised for sale at the reference price at any point
3 in the 90 days preceding their purchase.

4 **California Subclass (“California Subclass” or
5 “Subclass”)**

6 All individuals who, within the applicable
7 limitations period, purchased from the Defendants’
8 website one or more products that were advertised
9 or promoted by displaying or disseminating a
reference price or discount for an item that was not
advertised for sale at the reference price at any point
in the 90 days preceding their purchase.

10 60. Excluded from the Class and Subclass (collectively “Classes”)
11 are Defendants, their parents, subsidiaries, affiliates, officers and directors,
12 and judicial officers and their immediate family members and associated
13 court staff assigned to this case.

14 61. Plaintiff reserves the right to modify or amend the definitions of
15 the proposed Classes before the Court determines whether certification is
16 appropriate.

17 62. The proposed Classes meet the criteria for certification under
18 Fed. R. Civ. P. 23(a), (b)(2), and (b)(3).

19 63. **Numerosity:** This action is appropriately suited for a class
20 action. The members of the Classes are so numerous that the joinder of all
21 members is impracticable. Upon information and belief, the proposed Classes
22 contain well over 100 members, and likely thousands of individual purchasers
23

1 who have been damaged by Defendants' conduct as alleged herein, the
2 identity of whom is within the knowledge of Defendants and can be easily
3 determined through Defendants' records.
4

5 **64. Commonality:** This action involves questions of law and fact
6 common to the Classes. The common legal and factual questions include, but
7 are not limited to, the following:
8

- 9 a. Whether Defendants made false or misleading statements of fact
10 in its advertisements;
- 11 b. Whether Defendants' policies and actions regarding its
12 advertising were unfair, deceptive, or misleading;
- 13 c. The accuracy of Defendants' advertised reference prices and
14 discounts;
- 15 d. Whether Defendants breached their contract with Plaintiff and
16 the Class members;
- 17 e. Whether Defendants were unjustly enriched as a result of its
18 actions with respect to reference pricing and discounts
19 advertised;
- 20 f. Whether the alleged conduct of Defendants violates California
21 Civil Code §§ 1750 *et seq.*, California Business & Professions
22 Code §§ 17500 *et seq.*, California Business & Professions Code
23 §§ 17501 *et seq* and/or California Business & Professions Code
24 §§ 17200 *et seq.*
- 25 g. Whether Plaintiff and the members of the Classes have suffered
26 injury and have lost money or property as a result of such false
27 or misleading discounts and reference prices;
- 28 h. Whether Defendants should be enjoined from further engaging

1 in the misconduct alleged herein.

2 i. Whether Plaintiff and the members of the Classes are entitled to
3 declaratory and injunctive relief and the nature of that relief.

4 65. **Typicality:** Plaintiff's claims are typical of the claims of the
5 members of the Classes, because, *inter alia*, Plaintiff and all members of the
6 Classes purchased Defendants' products advertised at a discount on
7 Defendants' website. Moreover, Plaintiff's claims are typical of the Class
8 members' claims because Plaintiff is advancing the same claims and legal
9 theories on behalf of himself and all members of the Classes. In addition,
10 Plaintiff is entitled to relief under the same causes of action and upon the same
11 facts as all other members of the proposed Classes.

15 66. **Adequacy:** Plaintiff will fairly and adequately represent and
16 protect the interests of the members of the Classes and has retained competent
17 counsel experienced in complex litigation and class action litigation. Plaintiff
18 has no interests antagonistic to those of the members of the Classes and
19 Defendants have no defenses that are unique to Plaintiff.

22 67. **Superiority:** A class action is superior to other methods for the
23 fair and efficient adjudication of this controversy. The damages or other
24 financial detriment suffered by individual class members is relatively small
25 compared to the burden and expense that would be created by individual
26

1 litigation of their claims against Defendants. It would be virtually impossible
2 for a member of the Classes, on an individual basis, to obtain effective redress
3 for the wrongs done to him or her. Further, even if the members of the Classes
4 could afford such individualized litigation, the court system could not.
5 Individualized litigation would create the danger of inconsistent or
6 contradictory judgments arising from the same set of facts. Individualized
7 litigation would also increase delay and expense to all parties and the court
8 system arising from such individual claims. By contrast, the class action
9 device provides the benefits of adjudication of these issues in a single
10 proceeding, economies of scale, and comprehensive supervision by a single
11 court, and presents no management difficulties under the circumstances here.
12
13

14 68. Plaintiff seeks monetary damages, including compensatory
15 damages on behalf of the Classes, and other equitable relief on grounds
16 generally applicable to the Classes as a whole and to the public. Unless a Class
17 is certified, JCPenney will be allowed to profit from its unfair and unlawful
18 practices, while Plaintiff and the members of the Classes will have suffered
19 damages. Unless a Class-wide injunction is issued, JCPenney will likely
20 continue to benefit from the violations alleged, and the members of the
21 Classes and the general public will likely continue to be victimized.
22
23

24 69. JCPenney has acted and refused to act on grounds generally
25
26

1 applicable to the Classes, making final injunctive relief appropriate with
2 respect to the Classes as a whole.
3

4 70. All applicable statutes of limitations have been tolled by the
5 delayed discovery doctrine. Plaintiffs and members of the Classes could not
6 have reasonably discovered Defendants' practice of running perpetual and/or
7 extended sales, based on deceptive reference prices and deceptive sale prices,
8 at any time prior to commencing this class action litigation.
9

10 71. A reasonable consumer viewing JCPenney's website on multiple
11 occasions would simply believe that a product just happens to be on sale when
12 the consumer is on the website. Short of visiting and checking the website for
13 months continuously or creating automated means of recording the price over
14 a substantial period of time, a reasonable consumer would not suspect that
15 Defendants' sales and pricing practices were false or misleading. Nor would
16 a reasonable consumer be able to ascertain the true value of the products being
17 sold absent extensive investigation, which reasonable consumers would not
18 be on notice to have to do.
19
20

21 72. Plaintiff did not learn of Defendants' deceptive practices alleged
22 herein until shortly before retaining counsel in this action.
23
24

25 73. As a result, any and all applicable statutes of limitations
26 otherwise applicable to the allegations herein have been tolled.
27
28

CAUSES OF ACTION

COUNT I

**FRAUD – INTENTIONAL MISREPRESENTATION AND
OMISSION
(On behalf of Plaintiff and the Class)**

74. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1–73 as if fully set forth herein.

75. Defendants made false and misleading statements of fact and material omissions concerning the existence reference prices and the amounts of price reductions. These representations were false because the false reference prices advertised in connection with products offered on the website misled, and continue to mislead, consumers into believing the products were previously sold on the website at the higher reference prices, when in fact they were not. Defendants knew that these representations were false at the time that they made them and/or acted recklessly in making the misrepresentations.

76. Defendants had a duty to accurately disclose the truth about its pricing information, including that the reference prices advertised on the website were not truly former prices and that the “discount” price advertised was not truly a discount. Reasonable consumers were likely to be deceived, and were deceived, by Defendants’ failure to disclose material information.

77. Defendants knew that the items Plaintiff and the members of the Class purchased had rarely, if ever, been offered or sold on the website at the

1 higher reference price in the recent past.

2 78. Defendants' representations were made with the intent that
3 Plaintiff and the members of the Class would rely on the false representations
4 and spend money they otherwise would not have spent, purchase items they
5 otherwise would not have purchased, and/or spend more money for an item
6 than they otherwise would have absent the deceptive pricing scheme.

7 79. Defendants employed this scheme in order to incentivize
8 consumers with the sole intent of maximizing profits to the detriment of those
9 same consumers.

10 80. Defendants intended that Plaintiff, and all members of the Class,
11 rely on Defendants' false representations. Plaintiff and all members of the
12 Class reasonably relied on Defendants' representations. Absent Defendants'
13 misrepresentations, Plaintiff and the members of the Class would not have
14 purchased the items from Defendants, or, at the very least, they would not
15 have paid as much for the items as they ultimately did. Plaintiffs and the Class
16 members' reliance was a substantial factor in causing their harm.

17 81. Had the true reference price not been omitted, Plaintiff and the
18 members of the Class reasonably would have behaved differently. Among
19 other things, they would not have purchased the items they purchased from
20 Defendants or, at the very least, would not have paid as much for the items as
21

they ultimately did.

82. As a direct and proximate result of the above, Plaintiff and the
members of the Class have suffered damages because: (a) they would not have
purchased Defendants' products if they had known that the representations
were false, and/or (b) they overpaid for the products because the products
were sold at a premium price due to the misrepresentations.

83. Plaintiffs and the members of the Class are also entitled to punitive or exemplary damages. Defendants, through senior executives and officers, undertook the illegal acts intentionally or with conscious disregard of the rights of Plaintiff and the Class, and did so with fraud, malice, and/or oppression.

5 84. Based on the allegations above, Defendants' actions were
6 fraudulent because Defendants intended to and did deceive and injure
7 Plaintiff and the members of the Class. Based on the allegations above,
8 Defendants' conduct was made with malice because Defendants acted with
9 the intent to cause and did cause injury to Plaintiff and all members of the
0 Class, and because Defendants willfully and knowingly disregarded the rights
1 of Plaintiff and all members of the Class.

COUNT II
NEGLIGENT MISREPRESENTATION
(On behalf of Plaintiff and the Class)

1 85. Plaintiff repeats and realleges each and every allegation
2 contained in paragraphs 1 – 84 as if fully set forth herein.
3

4 86. As alleged more fully herein, Defendants made false or
5 misleading statements and/or material omissions of fact concerning the
6 existence of and the amounts of price reductions because Defendants falsely
7 represents the products as on sale, when in truth the reference price was a
8 fictitious price, rendering the purported “sale” a fictitious discount. When
9 Defendants made these misrepresentations, they knew or should have known
10 that they were false. Defendants had no reasonable grounds for believing that
11 these representations were true when made.
12

13 87. By choosing to advertise a reference price, Defendants had a duty
14 to accurately disclose the truth about its pricing, including the fact that the
15 reference prices advertised and published on the website were not truly former
16 prices and that the “discount” price advertised was not a true discount.
17

18 88. Defendants knew its sales were falsely advertised with a false
19 reference price. Defendants also knew or should have known that the
20 reference prices were not the prevailing market prices or true value of the
21 products. Defendants further knew that the items Plaintiff and the Class
22 purchased had rarely, if ever, been offered or sold on the website at the false
23 reference price.
24

89. Defendants had no good faith or reasonable basis to believe that its representations were true when made.

90. Defendants' representations were made with the intent that Plaintiff and the members of the Class rely on the false representations and spend money they otherwise would not have spent, purchase items they otherwise would not have purchased, and/or spend more money for an item than they otherwise would have absent the deceptive pricing scheme.

91. Class-wide reliance can be inferred because Defendants' misrepresentations were material, i.e. a reasonable consumer would consider them important in deciding whether to buy Defendants' products.

92. Defendants' misrepresentations were a substantial factor and proximate cause in causing damage and losses to Plaintiff and the members of the Class.

93. Defendants engaged in this fraud to the Plaintiff and the Class members' detriment to increase Defendants' own sales and profits.

94. Plaintiff and the members of the Class reasonably relied on Defendants' representations. Absent Defendants' misrepresentations, Plaintiff and the members of the Class would not have purchased the items they purchased from Defendants, or, at the very least, they would not have paid as much for the items as they ultimately did. Plaintiff and the Class

members' reliance was a substantial factor in causing them harm.

95. Had the omitted information been disclosed, Plaintiff and the members of the Class reasonably would have behaved differently. Among other things, they would not have purchased the items they purchased from Defendants or, at the very least, would not have paid as much for the items as they did.

96. As a direct and proximate result of the above, Plaintiff and the members of the Class have suffered damages because they would not have purchased Defendants' products if they had known that the representations were false, and/or they overpaid for the products because the products were sold at a price premium due to the misrepresentations.

COUNT III
BREACH OF CONTRACT
(On behalf of Plaintiff and the Class)

97. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-96 as if fully set forth herein.

98. Defendants offered products for sale to Plaintiff and the members of the Class under the terms advertised on Defendants' website.

99. The terms of Defendants' offer provided that Defendants would sell Plaintiff and the members of the Class products that have a market value equal to the reference prices displayed. The terms also required that

1 Defendants provide Plaintiff and the members of the Class with the discount
2 listed on Defendants' website.
3

4 100. The specific discount was a material term of each contract.
5

6 101. The terms of the offer also provided that Plaintiff and the
7 members of the Class would pay Defendants for the products purchased.
8

9 102. Plaintiff and the members of the Class accepted Defendants'
10 offer and paid Defendants for the products they ordered, thereby satisfying all
11 conditions of their contracts.
12

13 103. Defendants breached the contracts with Plaintiff and the
14 members of the Class by failing to provide products that had a market value
15 equal to the reference price displayed on its website, and by failing to provide
16 the promised discount.
17

18 104. As a direct and proximate result of Defendants' breaches,
19 Plaintiff and the members of the Class were deprived of the benefit of their
20 bargained-for exchange, and have suffered damages in an amount to be
21 established at trial.
22

23 **COUNT IV**
24 **UNJUST ENRICHMENT**
25 **(On behalf of Plaintiff and the members of the Class)**

26 105. Plaintiff repeats and realleges each and every allegation
27 contained in paragraphs 1–104 as if fully set forth herein.
28

1 106. Plaintiff brings this claim in the alternative to the contract-based
2 claims, including his breach of contract claim.
3

4 107. Plaintiff brings this claim individually and on behalf of the
5 members of the Class against Defendants.
6

7 108. Plaintiff and the members of the Class conferred a benefit on
8 Defendants, which Defendants knew about, when it initiated its false pricing
9 scheme.
10

11 109. Plaintiff and members of the Class were, and many continue to
12 be, consumers of Defendants' products. They reasonably believed that
13 Defendants would not falsely advertise discounted products. Plaintiff and
14 members of the Class suffered financial losses when they were deceived into
15 purchasing products that they reasonably believed to be on sale. By inflating
16 the reference price and then offering a "sale," Defendants creates a false sense
17 of urgency, a misleading perception of value, and a misleading perception of
18 savings, tricking customers into paying more than they should or would for
19 Defendants' product. Customers who rely on advertised sales to make
20 informed decisions are deceived into paying a premium for the product and
21 do not receive a product worth as much as Defendants represented the product
22 to be worth.
23
24

25 110. This deceptive practice undermines fair competition and allows
26
27

1 Defendants to profit unfairly. Defendants has accepted and retained these
2 benefits as a result of its sales of merchandise offered at a false discounted
3 price, making Defendants' retention of them unjust.
4

5 111. By its wrongful acts and omission described herein, including
6 engaging in deceitful and misleading advertising practices by using false
7 discounts to lure in consumers to purchase products they would not have
8 otherwise purchased or for amounts they would not have otherwise paid,
9 Defendants was unjustly enriched at the expense of Plaintiff and the members
10 of the Class.
11

12 112. Plaintiff's and the Class members' detriment, and Defendants'
13 enrichment, were related to and flowed from the wrongful conduct alleged in
14 this Complaint.
15

16 113. Defendants have profited from its unlawful, unfair, misleading,
17 and deceptive practices at the expense of Plaintiff and the members of the
18 Class. It would be inequitable for Defendants to retain the profits, benefits,
19 and other compensation obtained from its wrongful conduct described herein.
20

21 114. Plaintiff and the members of the Class have been damaged as a
22 direct and proximate result of Defendants' unjust enrichment.
23

24 115. Plaintiff and the members of the Class are entitled to recover
25 from Defendants all amounts wrongfully collected and improperly retained
26
27

1 by Defendants.

2 116. As a direct and proximate result of Defendants' wrongful
3 conduct and unjust enrichment, Plaintiff and the members of the Class are
4 entitled to restitution of, disgorgement of, and/or imposition of a constructive
5 trust upon all profits, benefits, and other compensation obtained by
6 Defendants for its inequitable and unlawful conduct.
7

8

9 **COUNT V**
10 **VIOLATION OF CALIFORNIA'S CONSUMER LEGAL REMEDIES**
11 **ACT ("CLRA")**
12 **Cal. Civ. Code §§ 1750 *et seq.***
(On behalf of Plaintiff and the California Subclass)

13 117. Plaintiff repeats and realleges each and every allegation
14 contained in paragraphs 1–116 as if fully set forth herein.
15

16 118. Plaintiff brings this claim individually and on behalf of the
17 members of the California Subclass against Defendants.

18 119. Plaintiff and all members of the California Subclass are
19 "persons" and "consumers" as defined in Cal. Civ. Code § 1761(d).
20

21 120. Defendants are a "person" as defined in Cal. Civ. Code §
22 1761(c).
23

24 121. The products purchased by Plaintiff and the members of the
25 California Subclass from Defendants are "goods" as defined by Cal. Civ.
26 Code § 1761(a).
27

1 122. Plaintiff's and the California Subclass members' purchases from
2 Defendants constitute "transactions," as defined by Cal. Civ. Code § 1761(e).
3

4 123. The CLRA prohibits "unfair methods of competition and unfair
5 or deceptive acts or practices undertaken by any person in a transaction
6 intended to result or which results in the sale or lease of goods or services to
7 any consumer." Cal. Civ. Code § 1770.
8

9 124. As alleged herein, Defendants engaged in unfair and deceptive
10 acts or practices insofar as they made and disseminated false and misleading
11 statements of facts in its advertisements to class members by using false
12 reference prices and advertising fake discounts in violation of the CLRA. *See*
13
14 *Id.*
15

16 125. Defendants' conduct as described herein was and is in violation
17 of the CLRA. Defendants' conduct violates at least the following enumerated
18 CLRA provisions:
19

20 a. Cal. Civ. Code § 1770(a)(5): Representing that goods or
21 services have characteristics, uses, benefits, or quantities
22 that they do not have or that a person has a sponsorship,
23 approval, status, affiliation, or connection that the person
24 does not have;

25 b. Cal. Civ. Code § 1770(a)(9): Advertising goods or
26 services with intent not to sell them as advertised; and

27 c. Cal. Civ. Code § 1770(a)(13): Making false or
28 misleading statements of fact concerning reasons for,
existence of, or amounts of price reductions.

1
2 126. Defendants have violated Section 1770(a)(5) by representing that
3 products offered for sale on its website have characteristics or benefits that
4 they do not have. Specifically, Defendants represent that the value of their
5 products is greater than it actually is by advertising inflated reference prices
6 and false discounts.
7

8 127. Defendants have violated Section 1770(a)(9) by advertising their
9 products as being offered at a discount, when in fact Defendants do not intend
10 to sell the products at a discount.
11

12 128. Defendants have violated Section 1770(a)(13) by
13 misrepresenting the regular reference price of products on the JCPenney
14 website and by advertising false discounts and savings.
15

16 129. Defendants' practice of misrepresenting, actively concealing,
17 and/or failing to disclose the true prices of the products listed on its website
18 violated and continues to violate the CLRA.
19

20 130. Defendants' misrepresentations were likely to deceive, and did
21 deceive, Plaintiff and reasonable consumers. Defendants knew, or should
22 have known, that these statements were inaccurate and misleading.
23

24 131. Defendants' misrepresentations were intended to induce
25 reliance, and Plaintiff reasonably relied on them when making his purchase.
26 Defendants' misrepresentations were a substantial factor in Plaintiff's
27
28

1 purchase decision.

2 132. Defendants' deceptive practices significantly impacted Plaintiff
3 and the members of the California Subclass. The misleading information
4 presented was material, meaning a reasonable person would consider it
5 heavily when deciding to buy products. This false information directly caused
6 financial harm. Plaintiff and the members of California Subclass ended up
7 purchasing goods they otherwise would not have purchased or spending more
8 than the products' true value.

9 133. Class-wide reliance can be inferred because Defendants'
10 misrepresentations were material, in that a reasonable consumer would
11 consider them important when deciding whether to buy a product and how
12 much to pay for a product.

13 134. Defendants' misrepresentations were a substantial factor and
14 proximate cause in causing damages and losses to Plaintiff and the members
15 of the California Subclass.

16 135. Plaintiff and the members of the California Subclass were injured
17 as a direct and proximate result of Defendants' conduct because they would
18 not have purchased the products if they had known the truth, and/or they
19 overpaid for the products because the products were sold at a price premium
20 due to the misrepresentation.

1 136. Accordingly, pursuant to Cal. Civ. Code § 1780(a)(2), Plaintiff,
2 on behalf of himself and all other members of the California Subclass, seeks
3 injunctive relief.
4

5 137. The practices outlined above have caused significant harm to
6 Plaintiff, the California Subclass, and the public at large. Plaintiff and the
7 California Subclass members' injuries were proximately caused by
8 Defendants' unlawful and deceptive business practices. These unlawful and
9 unfair practices are ongoing and will likely continue unless stopped.
10 Therefore, Plaintiff seeks a permanent injunction to prevent Defendants from
11 engaging in such deceptive tactics. Additionally, Plaintiff seeks compensation
12 for attorney fees and costs incurred. Finally, under the CLRA, Plaintiff seeks
13 a public injunction to protect the general public from Defendants' misleading
14 advertising and omissions.
15

16 138. Pursuant to Cal. Civ. Code § 1782(a), on August 1, 2024,
17 Plaintiff's counsel served Defendants with notice of its CLRA violations by
18 certified mail, return receipt requested. Defendants acknowledged receipt of
19 the CLRA demand notice on August 21, 2024.
20

21 139. Defendants have failed to provide appropriate relief for their
22 CLRA violations within 30 days of its receipt of Plaintiff's demand notice.
23 Accordingly, pursuant to §§ 1780 and 1782(b) of the CLRA, Plaintiff is
24

1 entitled to recover actual damages, punitive damages, attorneys' fees and
2 costs, and any other relief the Court deems proper.
3

4

COUNT VI
VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW
(“FAL”)
Cal. Bus. & Prof. Code §§ 17501 *et seq.*
(On behalf of Plaintiff and the California Subclass)

5

6 140. Plaintiff repeats and realleges each and every allegation
7 contained in paragraphs 1–139 as if fully set forth herein.
8

9 141. Plaintiff brings this claim individually, and on behalf of the
10 members of the California Subclass against Defendants.
11

12 142. Defendants have violated Section 17501 of the California
13 Business and Professions Code.
14

15 143. Defendants have engaged in false or misleading advertising in
16 violation of the FAL. Defendants advertised, and continue to advertise,
17 reference prices and “sale” prices that are false, misleading and/or have the
18 tendency and likelihood to deceive reasonable consumers. *Brady v. Bayer*
19 *Corp.*, 26 Cal. App. 5th 1156, 1173 (2018) (“these laws prohibit ‘not only
20 advertising which is false, but also advertising which[,] although true, is either
21 actually misleading or which has a capacity, likelihood or tendency to deceive
22 or confuse the public.’”). To state a claim under the FAL “it is necessary only
23 to show that “members of the public are likely to be deceived.”” *Id.* (citations
24 omitted).
25

| omitted).

144. Defendants engaged in deceptive advertising practices within California and nationwide. These practices involved promoting its products through online platforms that contained untrue or misleading statements about the advertised goods. Notably, Defendants knew, or should have known with reasonable diligence, the information they disseminated was inaccurate.

145. As alleged more fully above, Defendants advertise reference prices on its website along with discounts.

146. The reference prices advertised by Defendants were not the prevailing market prices for the products within three months preceding publication of the advertisement.

147. Defendants' reference price advertisements do not state clearly, exactly, and conspicuously when, if ever, the former reference prices prevailed. Indeed, the advertisements do not indicate whether or when the purported former reference prices were offered at all.

148. The deceptive advertising practices employed by Defendants led Plaintiff and the members of the California Subclass to make decisions based on inaccurate information. Defendants' misrepresentations were intended to induce reliance, and Plaintiff reasonably relied on these misrepresentations when making his purchase decision.

1 149. Class-wide reliance can be inferred because Defendants'
2 misrepresentations were material.
3

4 150. Defendants' misrepresentations were a substantial factor and
5 proximate cause in damages to Plaintiff and the members of the California
6 Subclass.
7

8 151. Plaintiff and the members of the California Subclass were injured
9 as a direct and proximate result of Defendants' conduct because they would
10 not have purchased the products if they had known the truth, and/or they
11 overpaid for the products because the products were sold at a price premium
12 due to the misrepresentation.
13

14 **COUNT VII**

15 **Violation of California's False Advertising Law, Bus & Prof. Code**
16 **§§17500 *et seq.***

17 **(On behalf of Plaintiff and the California Subclass)**

18 152. Plaintiff repeats and realleges each and every allegation
19 contained in paragraphs 1–151 as if fully set forth herein.
20

21 153. Plaintiff brings this claim individually and on behalf of the
22 California Subclass.
23

24 154. Defendants have violated Section 17500 of the California
25 Business and Professions Code.
26

27 155. As alleged more fully above, Defendants have made and
28 disseminated false and misleading statements of facts in advertisements to

1 Plaintiff and the California Subclass members by advertising false reference
2 prices and false discounts regarding its products.
3

4 156. Defendants' representations were likely to deceive, and did
5 deceive, Plaintiff and reasonable consumers. Defendants knew, or should
6 have known, that these statements were inaccurate and misleading.
7

8 157. Defendants' misrepresentations were intended to induce
9 reliance, and Plaintiff reasonably relied on the statements when purchasing
10 the products. Defendants' misrepresentations were a substantial factor in
11 Plaintiff's purchase decision.
12

13 158. Class-wide reliance can be inferred because Defendants'
14 misrepresentations were material in that they concerned the price of the
15 product.
16

17 159. Defendants' misrepresentations were a substantial factor and
18 proximate cause in damages to Plaintiff and the members of the California
19 Subclass.
20

21 160. Plaintiff and the members of the California Subclass were injured
22 as a direct and proximate result of Defendants' conduct because they would
23 not have purchased the products if they had known the truth, and/or they
24 overpaid for the products because the products were sold at a price premium
25 due to the misrepresentation.
26
27

COUNT VIII
VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW
(“UCL”)
Bus. Prof. Code §§ 17200, *et seq.*
(On behalf of Plaintiff and the California Subclass)

161. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1–160 as if fully set forth herein.

162. Plaintiff brings this claim individually and on behalf of himself and all members of the California Subclass.

163. The UCL prohibits and provides civil remedies for unfair competition. Its purpose is to protect both consumers and competitors by promoting fair competition in commercial markets for goods and services. In service of that purpose, the California legislature framed the UCL's substantive provisions in broad, sweeping language. By defining unfair competition to include any "any unlawful, unfair or fraudulent business act or practice," the UCL permits violations of other laws to serve as the basis of an independently actionable unfair competition claim and sweeps within its scope acts and practices not specifically proscribed by any other law.

164. Defendants' acts and omissions alleged herein, specifically Defendants' violations of the CLRA and FLA, constitute unfair competition and/or unlawful, unfair, or fraudulent business practices in violation of the UCL.

1 165. Defendants' actions and omissions have violated, and continue
2 to violate, the "unlawful" prong of the UCL by creating misleading
3 advertisements with inflated reference prices and false discounts.
4 Additionally, Defendants have engaged in deceitful practices as outlined in
5 Cal. Civ. Code §§ 1705, 1709, and 1713. Further, Defendants engaged in
6 unlawful conduct by violating the Federal Trade Commission Act ("FTCA"),
7 which prohibits "unfair or deceptive acts or practices in or affecting
8 commerce" and prohibits the dissemination of false advertisements. 15 U.S.C.
9 § 45(a)(1), 15 U.S.C. § 52(a). As the FTC's regulations make clear,
10 Defendants' false pricing scheme violates the FTCA. 16 C.F.R. §§ 233.1, *et*
11 *seq.*
12

13 166. As further alleged herein, Defendants' conduct also violates the
14 "deceptive" prong of the UCL in that Defendants' representations that its
15 products were on sale, that the sale was limited in time, that the products had
16 a specific regular price, and that the customers were being offered discounts
17 from a higher value, were false and misleading.
18

19 167. Defendants' material misrepresentations, omissions, and lack of
20 disclosure are likely to mislead reasonable and potential customers, along
21 with the general public. These practices are inherently deceptive and mislead
22 consumers.
23

1 168. Plaintiff and the members of the California Subclass relied upon
2 Defendants' misrepresentations and omissions, as set forth above.
3

4 169. Defendants' misrepresentations and omissions are significant
5 because a reasonable consumer would consider this information when making
6 purchasing decisions. Plaintiff reasonably relied upon this misleading
7 information and would have acted differently if he had been presented with
8 accurate details. Similarly, class-wide reliance can be inferred because
9 Defendants' misrepresentations were material in that they concerned the price
10 of the product.
11

13 170. Defendants' conduct, as alleged above, was immoral, unethical,
14 oppressive, unscrupulous, and substantially injurious to consumers.
15

16 171. Defendants violated the "unfair" prong of the UCL by falsely
17 representing that its products were on sale, that the sale was limited in
18 time, that the products had a regular reference price higher than the sale price,
19 and that the customers were receiving discounts.
20

21 172. Defendants violated established public policy by violating the
22 CLA, the FAL, and the FTCA.
23

24 173. Defendants' misrepresentations and omissions resulted in it
25 receiving more money from Plaintiff and the members of the California
26 Subclass than it rightfully deserved. This money is subject to restitution. As
27
28

1 a direct consequence of Defendants' unfair, unlawful, and deceptive
2 practices, Plaintiff and the members of the California Subclass suffered
3 financial losses.
4

5 174. Plaintiff and the members of the California Subclass were injured
6 as a direct and proximate result of Defendants' conduct because they would
7 not have purchased the products if they had known the truth, and/or they
8 overpaid for the products because the products were not worth the "regular"
9 reference price represented by Defendants.
10

11 175. The harm to Plaintiff and the members of the California Subclass
12 greatly outweighs the public utility of Defendants' conduct. False statements
13 in connection with the sale of consumer products harms consumers and
14 injures competition. There is no public utility to misrepresenting the price of
15 a consumer product. This injury was not outweighed by any countervailing
16 benefits to consumers or competition.
17

18 176. Plaintiff and the members of the California Subclass could not
19 have reasonably avoided the injury caused by Defendants.
20

21 177. Without an injunction, Defendants will continue to harm
22 Plaintiff, the members of the California Subclass, and prospective consumers
23 at large. Defendants' misrepresentations and omissions are ongoing, and even
24 if it were to stop temporarily, there is a risk of it repeating these deceptive
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27
28

1 practices.

2 178. Plaintiff, on behalf of himself and all members of the California
3 Subclass, seeks public injunctive relief under the UCL to safeguard the
4 general public from Defendants' deceptive discount advertising and
5 misleading omissions.

6 179. Defendants' actions have caused substantial harm to Plaintiff, the
7 California Subclass, and the public. These practices are ongoing and are likely
8 to continue unless stopped.

9 180. Therefore, Plaintiff seeks a permanent injunction to prevent
10 Defendants from engaging in such unlawful, unfair, and fraudulent business
11 practices. Additionally, Plaintiff seeks restitution for the California Subclass
12 in an amount to be determined at trial, as well as attorney fees and costs under
13 Cal. Code Civ. Proc. § 1021.5. Further Plaintiff, on behalf of the members of
14 the California Subclass, requests that he be awarded all relief as may be
15 available by law, pursuant to Cal. Bus. Prof. Code § 17203.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff respectfully requests that the Court enter
18 judgment against Defendants as follows:

19 A. Certifying this action as a class action under Rule 23(b)(2) and
20 (b)(3) of the Federal Rules of Civil Procedure and naming Plaintiff as a
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representative of the Classes and Plaintiff's undersigned attorneys as Class Counsel to represent the Classes;

B. For an Order declaring that Defendants' conduct violated the laws referenced herein;

C. For an Order finding in favor of Plaintiff and the Classes on all counts asserted herein;

D. For an Order awarding actual, statutory, treble, and punitive damages as applicable:

E. For an Order awarding pre-judgment and post-judgment interest on all amounts awarded:

F. For injunctive relief as pleaded or as the Court may deem proper;

G. For disgorgement and restitution to Plaintiff and the members of the Classes of all monies received or collected from Plaintiff and the members of the Classes and all other forms of equitable relief;

H. For an Order awarding reasonable attorneys' fees and expenses and costs of suit; and

I. For such other and further relief as the Court may deem proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury as to all triable issues.

1 Dated: November 20, 2024 Respectfully submitted,

2

3

4 By: /s/ Kyle McLean

5 Kyle McLean (SBN 330580))

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17 *Attorneys for Plaintiff and the Proposed
18 Class*

19
20 **Pro hac vice* forthcoming

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